IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 22ND AUGUST 2007 / 31ST SRAVANA 1929

Bail Appl..No. 5109 of 2007()

CRMP.945/2007 of DISTRICT COURT, KALPETTA
CRIME NO.328/2007 OF THE SULTHAN BATHERY POLICE STATION

.....

: PETITIONER/ACCUSED

BINU,AGED 28 YEARS,S/O,. YOHANNAN,
KAVUMMOLAYIL HOUSE,AMBALAMOOLA POST,
NELLAKOTTAI VILLAGE,GUDALLUR TALUK,
NILGIRIS DISTRICT.

BY ADV. SRI.SUNNY MATHEW

RESPONDENTS: COMPLAINANT

STATE OF KERALA THROUGH THE
SUB INSPECTOR OF POLICE,
SULTHAN BATHERY POLICE STATION,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 22/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.5109 of 2007

Dated this the 22nd day of August, 2007

ORDER

Application for anticipatory bail. The petitioner faces allegations, inter alia, under Section 3 of the Prevention of Damages to Public Property Act 1984 as also under Section 353 I.P.C. The crux of the allegations against the petitioner is that he allegedly deterred sales tax official in the Vellachal Check post from performing his duty. He allegedly hit the barricade causing damage to the same and ignoring the request of the official to stop his vehicle he sped away after causing damage to the barricade.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. The petitioner was not present in any vehicle which allegedly was involved in the incident. The petitioner 's vehicle was also not involved in the incident. In these circumstances, anticipatory bail may be granted to the petitioner, it is urged.

3. The application is opposed by the learned Public Prosecutor. The learned Public Prosecutor submits that there are no circumstances whatsoever to doubt or suspect the version of the defacto complainant. It is certainly for the petitioner to appear before

the Investigating Officer or the learned Magistrate and offer the necessary explanations. At any rate, at the moment and with the available inputs, there is no reason to doubt or suspect the version of the complainant and there are no circumstances whatsoever to justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. This petition may, in these circumstances, be dismissed, submits the learned Public Prosecutor .

4. I have considered all the relevant inputs. I find merit in the opposition by the learned Public Prosecutor . I am not persuaded to agree that there are any features in this case which would justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C.

5. This application is, in these circumstances, dismissed, but I may hasten to observe that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

(R.BASANT, JUDGE)

rtr/-